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BEFORE THE ARIZONA CORPORATION CC**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

JUL 25 2011

GARY PIERCE - Chairman
 BOB STUMP
 SANDRA D. KENNEDY
 PAUL NEWMAN
 BRENDA BURNS

DOCKETED BY

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IN THE MATTER OF QWEST CORPORATION'S
 PETITION FOR ARBITRATION AND
 APPROVAL OF INTERCONNECTION
 AGREEMENT WITH NORTH COUNTY
 COMMUNICATIONS CORPORATION OF
 ARIZONA PURSUANT TO SECTION 252(B) OF
 THE COMMUNICATIONS ACT OF 1934 AS
 AMENDED BY THE TELECOMMUNICATIONS
 ACT OF 1996 AND APPLICABLE STATE LAWS.

DOCKET NO. T-03335A-09-0383

DOCKET NO. T-01051B-09-0383

DECISION NO. 72499**OPINION AND ORDER**

DATE OF ARBITRATION:

March 15, 2011

PLACE OF ARBITRATION:

Phoenix, Arizona

ARBITRATOR:

Jane L. Rodda

APPEARANCES:

Ms. Lisa Anderl and Mr. Norman G. Curtright,
 Qwest Corporation; and

Mr. Dale Dixon Jr., Law Office of Dale Dixon,
 on behalf of North County Communications
 Corporation of Arizona.

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT**Procedural History**

1. On August 3, 2009, pursuant to the Telecommunications Act of 1996 (the "1996 Act" or "the Act") Qwest Corporation ("Qwest") filed with the Commission a Petition for Arbitration of certain terms and conditions for interconnection and related arrangements ("Petition") with North

1 County Communications Corporation of Arizona ("NCC").¹

2 2. By Procedural Order dated August 5, 2009, a Procedural Conference was set for
3 September 2, 2009, to establish arbitration procedures.

4 3. On September 1, 2009, NCC docketed a letter requesting a 30 day continuance to give
5 the parties an opportunity to negotiate the interconnection agreement ("ICA").

6 4. At the September 2, 2009, Procedural Conference, Qwest agreed to the continuance,
7 and by Procedural Order dated September 2, 2009, a Procedural Conference for the purpose of
8 obtaining an update of the status of negotiations was set for October 1, 2009.²

9 5. On September 30, 2009, NCC filed a request for another 30 day continuance, stating
10 that the parties were making progress in their negotiations and were likely to resolve the matter
11 consensually. By Procedural Order dated September 30, 2009, the Procedural Conference was
12 continued until November 5, 2009.

13 6. By letter dated November 2, 2009, NCC filed another request for 30 day continuance
14 and reported that the parties were still negotiating. By Procedural Order dated November 5, 2009, the
15 Procedural Conference was continued to December 4, 2009.

16 7. At the December 4, 2009, Procedural Conference, Qwest and NCC confirmed that
17 their discussions continued to be productive and that they hoped to have a completed agreement filed
18 with the Commission by December 15, 2009.

19 8. By Procedural Order dated December 4, 2009, a Procedural Conference to determine
20 the status of the matter was set for January 8, 2010. At the January 8, 2010, Procedural Conference,
21 the parties reported that their differences on a new agreement were greater than they initially realized,
22 and they agreed that the matter should be set for arbitration.

23 9. By Procedural Order dated January 8, 2010, the matter was set for arbitration to
24 commence April 20, 2010.

25 10. On February 10, 2010, the parties filed separate position statements and issues

26 ¹ Section 252(b) of the 1996 Act provides that any party involved in the negotiation of an agreement may petition the state
27 commission to arbitrate any open issues. Section 252(b)(4) provides that the state commission shall limit its
consideration to the issues set forth in the petition and in the response thereto.

28 ² By Procedural Order dated September 23, 2009, the Procedural Conference was continued until October 5, 2009 to
accommodate a scheduling conflict.

1 matrixes.

2 11. On March 4, 2010, the parties filed a Joint Motion for Suspension of Procedural
3 Dates; Request for Procedural Conference; and Stipulation Regarding Responses. The parties stated
4 that it was apparent from NCC's Position Statement that NCC contested the Commission's
5 jurisdiction to arbitrate this matter and that the initial question of jurisdiction needed to be settled
6 before proceeding further.

7 12. By Procedural Order dated March 9, 2010, the arbitration schedule was suspended and
8 a Procedural Conference set for March 22, 2010. Because Commission jurisdiction was at issue, the
9 Commission's Utilities and Legal Divisions ("Staff") were requested to appear.

10 13. A Procedural Conference commenced on March 22, 2010, with Staff, Qwest and NCC
11 appearing through counsel. NCC agreed to file an Answer and any dispositive motions in the matter
12 by April 9, 2010. By Procedural Order dated March 23, 2010, a schedule for the expected Motion to
13 Dismiss was established.

14 14. On April 9, 2010, NCC filed its Motion to Dismiss and a Response to Qwest's
15 Petition.

16 15. On April 29, 2010, Qwest filed its Response to the Motion to Dismiss.

17 16. On May 10, 2010, Staff filed a request for an extension of time to file its Comments
18 on the Motion to Dismiss until May 24, 2010. By Procedural Order dated May 10, 2010, Staff's
19 request was granted and the procedural schedule extended, with oral argument set for June 29, 2010.

20 17. On May 25, 2010, Staff filed a Motion for Extension of Time to file Staff Comments
21 due to Staff's workload. In addition, subsequent to the May 10, 2010 Procedural Order, the
22 Commission changed the date of its Open Meeting which conflicted with the scheduled oral
23 argument. By Procedural Order dated May 28, 2010, Staff's Motion was granted, and oral argument
24 was set for July 1, 2010.

25 18. On May 27, 2010, Staff filed its Comments on NCC's Motion to Dismiss.

26 19. On June 15, 2010, NCC filed its Reply in Support of its Motion to Dismiss.

27 20. On June 23, 2010, Qwest filed Supplemental Authority in support of its Response to
28 the NCC Motion, consisting of the Oregon commission's denial of a similar NCC Motion to Dismiss

1 in the arbitration before that commission.

2 21. Oral argument commenced as scheduled on July 1, 2010, with the parties and Staff
3 being represented by counsel and appearing telephonically.

4 22. By Procedural Order dated September 30, 2010, NCC's Motion to Dismiss was
5 denied. The September 30, 2010, Procedural Order found that the existing, expired, ICA by its own
6 terms contained a provision that it could be renegotiated after two years. The Procedural Order
7 found: 1) that it would be unfair to deprive Qwest, the Incumbent Local Exchange Carrier ("ILEC"),
8 the ability to re-negotiate an ICA when the ICA recognizes such right; 2) such denial would shift all
9 power to NCC, the Competitive Local Exchange Carrier ("CLEC"); and 3) that to deprive the ILEC
10 the ability to seek arbitration when negotiations fail would deprive the ILEC of the benefits of the
11 Act. A Procedural Conference was set for October 28, 2010, to establish arbitration procedures.

12 23. On October 20, 2010, Qwest filed a Motion to Reschedule the October 28, 2010,
13 Procedural Conference because Qwest's counsel had a prior conflicting court appearance. NCC did
14 not object, and by Procedural Order dated October 21, 2010, the Procedural Conference was
15 rescheduled for November 1, 2010.

16 24. On October 27, 2010, the parties filed a Joint Matrix of Disputed Issues ("Jt. Matrix").

17 25. Qwest, NCC and Staff appeared at the November 1, 2010, Procedural Conference, at
18 which time a schedule for filing testimony and conducting the arbitration was discussed. The
19 schedule was formally established in a November 3, 2010, Procedural Order.

20 26. On December 15, 2010, Qwest filed the Direct Testimony of Philip Linse, Director-
21 Legal Issues for Network, and Renee Albersheim, Qwest's Staff Witnessing Representative in its
22 Global Wholesale Market Organization; and NCC filed the Direct Testimony of Todd Lesser,
23 President of NCC.

24 27. On January 4, 2011, Qwest filed an Unopposed Motion for Extension of Time to File
25 Rebuttal Testimony, from January 14, 2011, to January 28, 2011, because of the involvement of
26 Qwest's counsel in merger proceedings in multiple jurisdictions. By Procedural Order dated January
27 10, 2011, the testimony deadline was extended until January 28, 2011.

28 28. On January 26, 2011, NCC filed a Motion to Extend Time for Reply Testimony and

1 Arbitration Hearing because it had engaged new counsel for the arbitration. The request was granted
 2 by Procedural Order dated February 4, 2011, and the arbitration was continued to March 15, 2011,
 3 with Reply Testimony due February 11, 2011.

4 29. On February 11, 2011, Qwest filed the Rebuttal Testimony of Mr. Linse and Ms.
 5 Albersheim, and NCC filed the Reply Testimony of Mr. Lesser.

6 30. On March 15, 2011, Qwest and NCC appeared before a duly authorized
 7 Administrative Law Judge acting as arbitrator in this matter. The arbitration required one day of
 8 hearing.

9 31. On April 22, 2011, Qwest and NCC filed their post-hearing briefs.

10 Background

11 32. Qwest is an ILEC pursuant to 47 U.S.C. § 252 and provides telecommunication
 12 services within Arizona.

13 33. NCC received a Certificate of Convenience and Necessity ("CC&N") to provide
 14 facilities-based and resold local exchange and inter/intraLATA telecommunications services
 15 throughout the state as a CLEC in Decision No. 62128 (December 14, 1999). In Arizona, NCC
 16 provides telephone service to businesses that take incoming calls.³ Currently, traffic flows from
 17 Qwest to NCC for direct interconnection (i.e. NCC does not directly send calls to Qwest).⁴

18 34. Qwest and NCC entered into an ICA dated November 22, 1997.⁵ The existing ICA at
 19 Section XXXIV (Miscellaneous Terms) ¶ V. (Term) provides:

20 This Agreement shall be effective for a period of 2 ½ years, and thereafter
 21 the Agreement shall continue in force and effect unless and until a new
 22 agreement, addressing all of the terms of this Agreement, becomes
 23 effective between the Parties. The Parties agree to commence negotiations
 24 on a new agreement no later than two years after this Agreement becomes
 25 effective.

26 The ICA is currently in "evergreen status" while the parties negotiate/arbitrate a new agreement.

27 ³ Transcript of March 23, 2011 Arbitration ("Tr.") at 129-133.

28 ⁴ Tr. at 138.

⁵ Ex Q-3 Albersheim Dir. at 3. The agreement was originally arbitrated between U.S. West Communications, Inc. and MFS Communications Company. A copy of the existing ICA was admitted as an exhibit in this proceeding. See Ex Q-6. On April 1, 2011, Qwest's parent company, Qwest Communications International, Inc. was acquired by CenturyLink, Inc. At the time of this proceeding, the entity that provides interconnection and local telephone service, continues to exist under the Qwest name.

1 35. Qwest believes that its ICA with NCC is outdated in that its terms and product
2 descriptions do not match Qwest's current products and processes. Qwest believes that its proposed
3 ICA, based on its current template agreement, will better address circumstances which Qwest claims
4 have led to billing disputes with NCC under the existing ICA. Qwest states that it requested to
5 negotiate a new agreement with NCC in 2008, and that it provided NCC a copy of its negotiation ICA
6 template at that time as a basis to start negotiations.⁶

7 36. NCC believes that a new ICA is not necessary because it believes that the existing
8 ICA satisfies all aspects of interconnection under the Act and state laws. NCC argues that Qwest has
9 not demonstrated a legal or regulatory requirement for discarding the existing ICA and forcing NCC
10 to accept a new agreement. NCC further asserts that Qwest is trying to impose its internal business
11 desires and new terms on NCC that unilaterally benefit Qwest.⁷

12 37. NCC wishes to retain Multi-Frequency ("MF") signaling as its method of
13 interconnection. In addition, NCC objects to Qwest's proposed cap on compensable minutes (Section
14 7.8.1.2); Qwest's proposed Relative Use Factor ("RUF") and restrictions on Virtual NXX ("VNNX")
15 (Sections 7.3.1.1.3.1 and 7.3.2.2.1); Qwest's proposed prohibitions against using third-party tandem
16 providers for interconnection (Section 7.2.1.1); Qwest's multiplexer ("MUX") fees and/or installation
17 fees on trunks (in the alternative, NCC seeks to charge reciprocal MUX and installation fees on
18 Qwest)(Section 7.3.2.3 and 7.3.3); Qwest's unwillingness to purchase Calling Number ("CNAM")
19 data (i.e. Caller ID information); and seeks to prohibit Qwest from charging for the billing records
20 that Qwest provides to NCC, which records NCC states it needs to bill Qwest for reciprocal
21 compensation.⁸

22 38. Qwest states that it does not typically employ MF signaling, but rather uses Signaling
23 System 7 ("SS7") for call management. However, to accommodate NCC, Qwest has modified the
24 language in its template ICA that would allow NCC to retain MF signaling for calls sent from Qwest
25 to NCC, but would require NCC to upgrade to SS7 to send calls to Qwest. Qwest also proposes
26

27 ⁶ Ex Q-3 Albersheim Dir. at 5.

28 ⁷ NCC Brief at 1-2.

⁸ NCC Brief at 2. In its Brief, NCC lists the charges for billing records as an issue in this proceeding, but did not provide testimony or argument about this issue. We do not address this issue as part of this Order.

1 language that caps compensable minutes and establishes a billing procedure in order to verify NCC's
2 bills to Qwest and to bill NCC for any traffic that NCC sends to Qwest.⁹

3 Issues in Dispute

4 MF Signaling vs SS7 Signaling and Cap on Compensable Minutes

5 39. Network signaling is the information that is sent between network elements and
6 includes supervisory information used to initiate and terminate connections, indicate network
7 connection status (i.e. whether the line is busy), managing the network connection and general
8 information transactions.¹⁰

9 40. MF signaling is generally an audible analog code (i.e. a series of tones) that is used to
10 manage connections between telecommunications switches. MF signaling is known as "in-band"
11 signaling, which means that the path that the signaling uses to manage the trunk connections between
12 switches is the same trunk connection as the conversation/talk path.¹¹

13 41. SS7 signaling is a digital code that is used to manage connections between
14 telecommunications switches and call related databases. It is a type of signaling that is known as
15 Common Channel Signaling ("CCS") or out-of-band signaling.¹² "Out-of-band" signaling means that
16 the path that the signaling uses to manage the trunk¹³ connections between switches is not the same
17 trunk connection as the conversation/talk path.¹⁴ Qwest asserts that SS7 signaling is faster, more
18 efficient, more flexible and more reliable than MF signaling.¹⁵ Qwest states that SS7 technology is
19 more advanced than MF signaling and allows carriers to more accurately track traffic and therefore,
20 more accurately bill for traffic.¹⁶ According to Qwest, unlike MF, SS7 provides for the signaling of
21 both the calling and called numbers, so that the jurisdiction of the call can be determined.¹⁷ Qwest
22 asserts that the lack of calling party number, or a bare measurement of overall minutes of use, does
23

24 ⁹ Qwest Brief at 3.

25 ¹⁰ Ex Q-1 Linse Dir. at 3.

26 ¹¹ Ex Q-1 Linse Dir. at 5.

27 ¹² Ex Q-1 Linse Dir. at 4.

28 ¹³ A trunk is the connection used to provide a communications path between switches.

¹⁴ Ex Q-1 Linse Dir. at 4.

¹⁵ Ex Q-1 Linse Dir. at 6.

¹⁶ Ex Q-1 Linse at 4-7.

¹⁷ Ex Q-2 Linse Reb, at 8-9.

1 not provide adequate information for billing purposes.¹⁸ Qwest states that SS7 signaling has become
 2 the dominant and preferred signaling method between telecommunications networks.¹⁹

3 42. According to Qwest, prior to the 1996 Act, it was not common to record information
 4 related to “local” telecommunications traffic (i.e. a call that originates and terminates in the same
 5 local calling area) because carriers charged a flat rate for local calling.²⁰ The 1996 Act required
 6 “reciprocal compensation” between local carriers for the transport and termination of
 7 telecommunications traffic.²¹ Thus, for local calls that originate with one carrier and terminate to a
 8 phone associated with a different carrier, the originating carrier pays compensation for the transport
 9 and termination of the call to the terminating carrier based on the length of the call at a specified
 10 reciprocal compensation rate. Thus, under the current intercarrier compensation regime, it is
 11 important to record the originating caller. Calls that originate in different calling areas are considered
 12 toll calls. The 1996 Act did not alter the regime of intercarrier compensation that existed prior to the
 13 enactment of the Act for toll calls, which is based on tariffed access charges.

14 43. According to Qwest, one of the limitations of MF signaling is its inability to segregate
 15 traffic on a jurisdictional basis, which causes billing problems because the nature of the traffic, (i.e.
 16 whether it is interstate, intrastate long distance, or local) affects how carriers bill each other.²² Qwest
 17 believes that the limitations of MF signaling led to the on-going billing dispute with NCC involving
 18 Jointly Provided Switched Access (“JPSA”) or “Meet Point Billing.”²³

19 44. Qwest explains that in 2001, Qwest and NCC had agreed on a methodology for NCC
 20 to invoice Qwest for reciprocal compensation. One step in that process involved the subtraction of
 21 minutes of use associated with the Qwest-provided JPSA records from the total minutes of use that
 22 NCC terminated over the local interconnect service (“LIS”) trunk groups that interconnect with
 23 Qwest’s tandem switches.²⁴ Qwest states that it is necessary to subtract the JPSA traffic from total

24 ¹⁸ Ex Q-2 Linse Reb. at 7.

25 ¹⁹ Ex Q-1 Linse Dir. at 8.

26 ²⁰ Ex Q-1 Linse Dir. at 9.

27 ²¹ Ex Q-1 Linse Dir. at 10.

28 ²² Ex Q-2 Linse Reb. at 7; Ex Q-4 Albersheim Reb. at 5.

²³ JPSA is the process whereby two or more local exchange carriers jointly provide the transport element of switched access to a third party—the long distance provider. The LECs each receive transportation revenue according to their tariffs. JPSA is not subject to reciprocal compensation.

²⁴ A tandem switch connects trunk circuits between end office switches.

1 minutes of use because Qwest does not pay reciprocal compensation for JPSA.²⁵ Qwest states that at
 2 some point in 2003, NCC stopped identifying the JPSA traffic on its invoices, and identified the
 3 minutes associated with "Meet Point Billing Records" as "N/A". Qwest states that in 2008, it was
 4 able to verify that NCC was not removing JPSA traffic from its bills to Qwest. Of the 335 invoices
 5 that Qwest has received from NCC, Qwest disputes 147 for a variety of reasons.²⁶

6 45. Qwest's template ICA Section 7.1 addresses interconnection. Qwest proposes the
 7 following modifications to its template language for Section 7.1.1 to accommodate NCC's desire to
 8 continue to use MF signaling, and proposes language for Section 7.8, concerning billing
 9 (modifications to Qwest's template agreement are designated in bold and underlined):²⁷

10 7.1.1 This Section describes the Interconnection of Qwest's network and
 11 CLEC's network for the purpose of exchanging Exchange Service
 12 (EAS/Local traffic), IntraLATA LEC Toll and Jointly Provided Switched
 13 Access traffic. Intercarrier traffic exchange will may be mutual and
 14 reciprocal and all traffic exchanged between the Parties must be provisioned
 15 pursuant to this Agreement. **The Parties understand and agree that**
 16 **CLEC currently sends no traffic to Qwest and instead terminates traffic**
 17 **either originated by Qwest or originated by other carriers and passed**
 18 **through Qwest to CLEC. The Parties further understand and agree**
 19 **that CLEC currently uses multi-frequency ("MF") signaling in its**
 20 **receipt of traffic from Qwest and does not utilize SS7 signaling. The**
 21 **Parties agree that, should CLEC subsequently wish to originate traffic**
 22 **to send to Qwest for termination or passing of traffic to other**
 23 **Telecommunications Carriers, the Parties will mutually negotiate an**
 24 **amendment to this Agreement which will also include requirements for**
 25 **use of SS7 signaling in the mutual exchange of traffic.** A Party that has
 26 interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251
 27 (c)(3) of the Act, may offer information services through the same
 arrangement, so long as it is offering Telecommunications Services through
 the same arrangement(s) as well. Enhanced or information service providers
 (providers or "Information Services" as that term is defined in 47 U.S.C. §
 153 (20)) that do not also provide domestic or international
 telecommunications are not Telecommunications Carriers as defined by the
 Act and thus may not interconnect under this Agreement. Qwest will
 provide Interconnection at any Technically Feasible Point within its
 network, including but not limited to, (i) the Line Side of a local Switch
 (i.e., local switching); (ii) the Trunk Side of a local Switch, (iii) the trunk
 connection points for a Tandem Switch, (iv) Central Office Cross
 Connection points, (v) out-of-band Signaling Transfer Points necessary to
 exchange traffic at these points and access call-related databases, and (vi)
 points of access to Unbundled Network Elements. Section 9 of this
 Agreement describes Interconnection at points (i), (iv), (v) and (vi),
 although some aspects of these Interconnection points are described in

27 ²⁵ Ex Q-3 Albersheim Dir. at 10.

28 ²⁶ Ex Q-3 Albersheim Dir. at 10, and attached Ex RA-Summery of Billing Disputes.

²⁷ Ex Q-5 Qwest Proposed ICA.

Section 7. "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between networks for the purpose of transmission and routing of Telephone Exchange Service traffic and IntraLATA LEC Toll traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest can demonstrate that such connections present a risk of Switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or any Affiliate's End User Customers.

7.2.1.1 This Section 7.2 addresses the exchange of traffic between CLEC's network and Qwest's network. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs or contractual offerings for such third party terminations. Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers. In addition, as discussed in Section 7.1.1 above, unless a later amendment is mutually negotiated by the Parties, CLEC will send no traffic to Qwest either for termination or for Qwest to send to other Telecommunications Carriers connected to Qwest.

7.8 Billing Methodology for MF Traffic Terminated to CLEC

7.8.1 While the traffic between Qwest and CLEC is as described in Section 7.1.1 and this Agreement has not been amended otherwise, CLEC will use the following process to determine the amount of traffic originated by Qwest that CLEC is entitled to receive intercarrier compensation from Qwest for its determination.

7.8.1.1 CLEC will determine each calendar month the total number of non-VNXX minutes terminating to CLEC's end office switch from Qwest over the LIS trunk groups interconnecting Qwest and CLEC for each of its end office switches. That information will be provided to Qwest on a per-trunk group basis.

7.8.1.2 Qwest will have the right, once per calendar year, to request reports of the data and determination method of Section 7.8.1.1 in order to audit the usage underlying the billed reciprocal compensation minutes of use. At no time shall the total number of minutes of use per in-service DS1 exceed 400,000 on a calendar month basis and then only when the number of required trunks (as determined by Qwest's traffic measurements) exceeds the number of in-service trunks.

7.8.1.3 In determining the number of minutes for which CLEC is entitled to receive intercarrier compensation for termination from

Qwest, CLEC will subtract from the total monthly minutes of use determined in Section 7.8.1.1 :

(a) All wireline-originating minutes of use that transits Qwest's network and terminates to CLEC's switches during that calendar month. Qwest will provide CLEC summary level messages and minutes each month for these wireline-originating transit records.

(b) All wireless-originating minutes of use for traffic that transits Qwest's network and terminates to CLEC's switches during that calendar month. Qwest will provide CLEC summary level messages and minutes each month for these wireless-originating transit records.

(c) All minutes of use for Jointly Provided Switched Access ("JPSA") traffic originating from or terminating to CLEC's switches during that calendar month. Qwest will provide CLEC summary level messages and minutes each month for these JPSA records.

(d) All Qwest-originated IntraLATA LEC Toll traffic for which Qwest is the originating intraLATA toll provider. Qwest will provide CLEC summary level messages and minutes each month for these intraLATA toll records.

(e) For clarification, as discussed generally in Section 7 of this Agreement, Qwest has no obligation to compensate CLEC for local minutes terminating to CLEC that are originated by third party providers, IntraLATA LEC Toll minutes terminating to CLEC for which Qwest is not the originating toll provider, and JPSA Traffic.

46. NCC argues that the Commission should reject Qwest's proposed prohibition on MF signaling for traffic sent to Qwest and the proposed cap on billable minutes for traffic sent from Qwest to NCC.²⁸ NCC states that Qwest's proposed agreement is per se prejudicial and unlawful because other carriers that operate in Arizona are not prohibited from using MF signaling for outbound calls.²⁹ NCC argues that the entire Section 7.1.1 should be deleted because Qwest has no right or authority to dictate technologies.³⁰

47. NCC asserts that Qwest's belief that it cannot certify NCC's billing under MF is erroneous, and that Qwest's switches can be programmed to obtain all necessary call information from NCC.³¹ NCC asserts that Qwest has not explored with its switch manufacturers how to effect a programming change.³²

²⁸ NCC Brief at 2.

²⁹ Tr. at 29 and 88; *See also* Jt Matrix.

³⁰ NCC Brief at 4, Jt Matrix at 1.

³¹ NCC Brief at 3.

³² NCC Brief at 3 *citing* Tr. at 53-54.

1 48. NCC claims that there are other ways to interconnect in addition to MF and SS7, such
 2 as ISDN (“Integrated Services Digital Network”), SIP (“Session Initiation Protocol”) and Voice Over
 3 Internet Protocol (“VoIP”). NCC claims that it sought to include interconnection via SIP/VoIP in the
 4 ICA, but that Qwest refused to discuss allowing NCC to interconnection with VoIP technology.³³
 5 NCC claims that it has the capability to interconnect by SIP or ISDN, and that SIP would address all
 6 of Qwest’s concerns.³⁴

7 49. NCC believes that the ICA should require Qwest to offer VoIP interconnection, as it is
 8 more efficient than SS7 with Time Division Multiplex (“TDM”). NCC argues that because Qwest
 9 currently offers IP interconnection on a wholesale basis to businesses and residential customers, it
 10 must make such interconnection available to requesting carriers that is equal in quality.³⁵ According
 11 to NCC, because Qwest can offer up to 46 voice lines per T1 by VoIP, compared to 24 voice lines per
 12 T1 using SS7, Qwest is being discriminatory and forcing competitors to provide services inferior to
 13 those offered by Qwest.

14 50. NCC argues that Qwest’s proposed cap of 400,000 compensable minutes is arbitrary,
 15 prejudicial and unlawful.³⁶ NCC believes that Qwest picked an arbitrarily low number for the cap as
 16 Qwest’s witnesses did not know NCC’s actual usage in Arizona.³⁷ NCC states that Qwest customers
 17 calling NCC’s customers would have no idea that there is a cap on minutes, and no incentive to stop
 18 calling numbers, and that NCC has no way to block calls. NCC argues that the only purpose of the
 19 400,000 minute cap is to arbitrarily and prejudicially discount the price Qwest pays for use of NCC’s
 20 network. NCC further argues that placing a 400,000 minute cap would constitute a regulatory takings
 21 under *United States v. Causby*.³⁸

22 51. NCC states that the FCC recently recognized the widespread use of MF signaling and
 23 is in the process of developing rules that would address Qwest’s concerns by requiring carriers that
 24
 25

26 ³³ NCC Brief at 3.

27 ³⁴ NCC Brief at 3 *citing* Ex N-3 Lesser Reply at 16-17.

28 ³⁵ NCC Brief at 4, Ex N-3 Lesser Reply at 16.

³⁶ NCC Brief at 5. *See* proposed ICA section 7.8.1.2.

³⁷ NCC Brief at 6.

³⁸ 328 U.S. 256 (1946).

1 use MF signaling to transmit calling number information.³⁹ NCC urges the Commission not to take
 2 action in this proceeding that would contradict the FCC's planned rulemaking or prevent a carrier
 3 from using an industry standard.

4 52. NCC claims that Qwest is asserting that the cap is due to Qwest's inability to verify
 5 calls and billing under MF signaling because Qwest verifies calls and billing using its SS7 records.⁴⁰
 6 NCC argues, however, that, as recognized by the FCC, SS7 was designed to facilitate call setup and
 7 routing, and its purpose is not to verify billing.⁴¹

8 53. NCC also argues that more importantly, the cap does not provide any growth rate on a
 9 per DS1 basis. NCC states that a DS1 uses up to a million minutes before needing to overflow into a
 10 second DS1, so Qwest's cap forces 60 percent inefficiency. NCC asserts that Qwest's cap will
 11 require NCC to purchase more DS1s in order to be fully compensated for the traffic that Qwest
 12 transmits to NCC.⁴²

13 54. NCC states that Qwest's inability to accurately track usage from NCC's network is a
 14 fabrication, as NCC claims that Qwest can provide Automatic Number Identification ("ANI") to
 15 NCC and NCC could determine billable minutes.⁴³ NCC claims that ANI information is available for
 16 MF technology and that other ILECs provide similar information to NCC.⁴⁴ Furthermore, NCC
 17 asserts Qwest can back into the number, by subtracting the total SS7 minutes from the total minutes
 18 to determine the MF (or NCC) minutes.⁴⁵

19 55. Qwest states that it designed its proposed contract language to allow NCC to continue
 20 to use MF Signaling for traffic that terminates with NCC, but give Qwest a way to verify the
 21 accuracy of NCC's bills and clarify that Qwest is not required to pay for minutes associated with
 22

23 ³⁹ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable*
 24 *Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier*
 25 *Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-9-, GN
 26 Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC
 27 Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM") FCC 11-13,
 28 ¶¶ 625-634 (rel. February 9, 2011).

⁴⁰ NCC Brief at 5.

⁴¹ *NPRM* at ¶ 628; *see also* Ex N-3 Lesser Reply at 5-6; *and* Tr. at 47 and 83-84.

⁴² NCC Brief at 7.

⁴³ ANI is the billing telephone number associated with the access line from which the call originates.

⁴⁴ NCC Brief at 7 *citing* Ex N-2 Lesser Dir. at 7-8.

⁴⁵ NCC Brief at 7 *citing* Tr. at 37-38.

1 JPSA, non-Qwest intraLATA LEC toll, wireless traffic, and minutes originated by third-party
 2 providers. Qwest insists that if the traffic between Qwest and NCC is going to be two-way, then
 3 Qwest will require NCC to upgrade to SS7 signaling because Qwest does not record the traffic that
 4 NCC routes to Qwest over MF trunks.⁴⁶ Qwest wants NCC to have responsibility for the tracking and
 5 billing of traffic because Qwest cannot tell the nature of the traffic using MF signaling.⁴⁷

6 56. Qwest notes that although NCC argues to retain the current ICA, that agreement
 7 requires NCC to transition to SS7 signaling.⁴⁸

8 57. Qwest argues that its proposed ICA terms do not discriminate against NCC, and that
 9 because it is proposing to accommodate NCC's request to interconnect in a manner that is different
 10 from how every other CLEC interconnects, it is appropriate to have different terms and conditions to
 11 address the problems raised by that method of interconnection.⁴⁹ Qwest states that these problems
 12 include an inability to track and measure local traffic that is destined for NCC's customers, making it
 13 difficult to validate NCC's bills to Qwest for reciprocal compensation, and an inability to track and
 14 measure local traffic that NCC might send to Qwest over those MF trunks. Qwest asserts that the
 15 terms are reasonable to ensure that Qwest is able to bill NCC for any traffic it sends to Qwest, while
 16 still using MF to receive traffic from Qwest.⁵⁰

17 58. Qwest's proposed ICA language for Section 7.8.1.2 caps the total number of minutes
 18 that will form the baseline for the calculation of compensable minutes. The proposed cap is an
 19 average of 400,000 minutes per DS1, per month, and Qwest argues that it is reasonable based on the
 20 number of minutes historically billed by NCC to Qwest.⁵¹ Qwest notes that the 400,000 minutes per
 21

22 ⁴⁶ Ex Q-1 Linse Dir. at 23.

⁴⁷ Ex Q-3 Albersheim Dir. at 17.

23 ⁴⁸ Ex Q-6 at Section XXXIII of the 1997 ICA, and see Ex Q-4 Albersheim Reb. at 10. Section XXXIII of the existing
 24 ICA states: "within 6 months from the date of final approval of this Agreement, the Parties agree to make a good faith
 effort to complete each of the following interconnection arrangements . . . (c) SS7 Interconnection and Certification . . ."

⁴⁹ Qwest Brief at 3.

25 ⁵⁰ Ex Q-3 Albersheim Dir. at 12.

26 ⁵¹ Ex N-3 Albersheim Dir. at 18-19. Qwest took the total number of minutes of use, as reported by NCC, terminating to
 27 NCC's Arizona switches each month for the period January 2007 through July 2008, excluding August and September
 28 2007 because the in-service trunk information was not available. Qwest divided that total by the number of in-service
 DS1's for each month. The 17 month average of the monthly minutes of use per DS1 was 419,551. Qwest did not
 believe that the 419,551 monthly average represented compensable minutes of use because Qwest used NCC's
 "unvalidated" billing data. Qwest states that it originally believed that a cap of 200,000 minutes for compensable local
 traffic, was reasonable, but doubled that estimate to arrive at its proposed 400,000 cap.

1 DS1 limit is 270 percent higher than the average of the Arizona CLECs interconnecting with Qwest
2 in October 2010, and 72 percent higher than the next highest Arizona CLEC for that same period.

3 59. Qwest argues the cap is necessary because NCC's use of MF signaling prevents Qwest
4 from being able to determine how much local traffic is being sent over the MF trunks. Qwest asserts
5 that the cap is designed to limit Qwest's obligation to compensate NCC, which is important because
6 NCC can receive all types of traffic over the MF trunks, and Qwest has no reasonable ability to
7 determine if all of those minutes are compensable to NCC.⁵²

8 60. Qwest explained that the cap would be applied on an average basis, rather than a per
9 DS1 basis. Qwest states it is willing to modify the language in Section 7.8 of the ICA to clarify this
10 position if necessary.⁵³

11 61. Qwest states that if NCC wants to renegotiate the cap, it should be required to work
12 with Qwest to negotiate a higher cap, after giving Qwest reasonable and verifiable assurance that the
13 additional minutes of use will result in local, compensable traffic.⁵⁴ Qwest states that in allowing
14 NCC to retain its MF trunks, Qwest is agreeing to undertake significant manual effort that it does not
15 have to undertake with other CLECs because no other CLEC interconnects only with MF trunks.

16 62. Qwest asserts that the burden is on the billing party to establish that bills are accurate
17 and proper. Qwest states that NCC's choice of using MF means that NCC cannot verify that it is
18 billing only for local minutes and that Qwest is prevented from verifying the information itself.⁵⁵

19 63. Qwest states that its proposed billing procedure under which Qwest will manually
20 generate reports to NCC that identify the non-local traffic is similar to the arrangement that NCC has
21 with AT&T and Verizon today.⁵⁶ NCC has explained that AT&T and Verizon send NCC reports that
22 exclude the non-local minutes and that NCC prepares its bills based on that information.

23 **Resolution**

24 64. Carriers must be able to identify the type of traffic that they are exchanging in order to
25 bill each other correctly. A service provider needs certain information such as the appropriate

26 ⁵² Ex Q-4 Albersheim Reb. at 8.

27 ⁵³ Qwest Brief at 10.

28 ⁵⁴ Qwest Brief at 4.

⁵⁵ Qwest Brief at 9.

⁵⁶ Ex Q-4 Albersheim Reb. at 7, fn 8.

upstream provider and the geographic location of the caller to identify the nature of the traffic. The FCC has recognized that a significant source of billing problems arise when the calling party number is not provided.⁵⁷ The FCC is seeking to amend its rules to require providers using MF signaling to pass CPN (calling party number) or the charge number (CN) in the MF ANI field.⁵⁸

65. Qwest has demonstrated a legitimate concern that it cannot receive accurate bills from NCC which appears to be due, at least in part, to NCC's use of MF signaling. Qwest has proposed a process that it believes will provide assurances that NCC's bills for reciprocal compensation do not include minutes of use for JPSA or toll traffic.

66. Qwest submitted evidence that NCC is the only CLEC that interconnects exclusively through MF signaling.

67. NCC has argued throughout the proceeding that Qwest is able to provide ANI to NCC using MF signaling. However, Mr. Linse testified for Qwest that NCC minimizes the importance of "class or service" and Qwest's ability to provide or receive ANI on a local call.⁵⁹ NCC did not provide persuasive testimony or other authority that refutes Qwest's position that there is a significant difference between local interconnection trunks and IXC trunks and that traffic is signaled differently depending on its nature as local or toll.⁶⁰ Although NCC alleges that Qwest's switches are able to be reprogrammed to obtain necessary ANI from MF switches,⁶¹ NCC did not provide evidence that it would be feasible for Qwest to reprogram its switches or the costs of doing so. Neither did NCC cite any authority that would require Qwest to reconfigure its local trunks to provide ANI over MF.

68. The evidence indicates that Qwest's practice under which ANI is not provided over local trunks comports with industry practice. NCC's claim that AT&T and Verizon have addressed the billing issue by providing monthly reports is not responsive to the question whether they are able to provide ANI over local trunks. NCC's claim that other carriers have given NCC ANI over MF for

⁵⁷ NPRM at ¶ 623.

⁵⁸ NPRM at ¶ 630.

⁵⁹ Ex Q-2 Linse Reb. at 19-24. Mr. Linse testified that a local class of service trunk group is used for originating local traffic to be routed over a MF signaled local interconnection trunk, and this class of service is routed using single-stage signaling without ANI. Originating toll traffic destined for MF signaled IXC trunks is routed using two-stage signaling with ANI. According to Mr. Linse, changing the class of service on the trunk group changes how the traffic would be treated, and local traffic originated over a trunk configured for toll, may be routed or billed incorrectly.

⁶⁰ Ex Q-2 Linse Reb. at 20.

⁶¹ Ex N-3 Lesser Reply at 19.

1 local traffic and the abilities of Neutral Tandem⁶² are not sufficiently supported for us to find in
2 NCC's favor on this issue.

3 69. NCC did not propose any contract language that would allow it to interconnect via
4 ISDN, SIP or VoIP. NCC did not provide evidence about how these technologies might substitute for
5 SS7 signaling. NCC did not propose any alternative contract language in this proceeding, evidently
6 preferring to rely on the existing, expired ICA.

7 70. Based on this record, Qwest has met its burden to demonstrate that circumstances
8 warrant the additional contract language concerning the use of MF signaling that Qwest proposes for
9 Section 7.1.1 and 7.2.1.1, and we find no impermissible discrimination.

10 71. Absent evidence about alternative interconnection technologies, Qwest's proposal to
11 use MF signaling for traffic delivered to NCC and to require SS7 signaling if NCC starts to deliver
12 traffic to Qwest is reasonable. Until NCC has a reasonable, concrete proposal for a different means
13 of interconnection or a billing procedure that can verify its bills are accurate, Qwest's proposal as set
14 forth in Section 7.1.1 is reasonable and should be adopted.

15 72. Qwest's proposed cap on compensable minutes of use is intended to limit its exposure
16 to paying reciprocal compensation for traffic that is not local.

17 73. The proposed cap of an average of 400,000 minutes of use per month for all in-service
18 DS1s was calculated based on NCC's current usage pattern and Qwest's best efforts to analyze that
19 data based on information received from NCC. NCC did not provide evidence in this proceeding
20 about its actual use of its in-service circuits, nor did it contest Qwest's calculations.

21 74. Under the new agreement, as proposed by Qwest, Qwest will be providing NCC with
22 manually generated reports for NCC to use in generating its bills. We expect this process to allow the
23 generation of accurate bills to both parties' satisfaction. We have not been presented with sufficient
24 detail of a workable alternative process as Qwest's witness testified that it does not record its own
25 local traffic.⁶³

26 75. It is critical to be able to determine if traffic is local or toll or transit in order for
27

28 ⁶² Ex N-2 Lesser Dir. at 7.

⁶³ Tr. at 39-44.

1 carriers to accurately bill each other. The proposed cap is reasonably calculated to address a short-
 2 coming in MF signaling for local interconnection that leaves carriers open to the potential of paying
 3 for traffic that should be compensated on some other basis or by some other party, or to not being
 4 able to charge the appropriate rate or party for terminating traffic.

5 76. Qwest has stated that it is willing to renegotiate the cap as long as it receives
 6 reasonable and verifiable assurance that the bills it receives are accurate. If NCC has a better method
 7 for proving assurance to Qwest that its bills do not include minutes of use for non reciprocal
 8 compensation traffic, then NCC should propose such method. In this proceeding, NCC did not
 9 propose alternative contract language for the billing procedures.

10 77. Consequently, we approve Qwest's proposed contract language for Section 7.8, except
 11 that we find the language in Section 7.8.1.2 should be modified to clarify that the monthly cap of
 12 400,000 minutes of use per in-service DS1 relates to compensable minutes of use and is calculated on
 13 an average basis over all in-service DS1s. In addition, language should be added that would allow
 14 either party to request a modification of the cap, including its elimination, based on verifiably
 15 accurate records that the traffic is appropriately subject to reciprocal compensation.

16 78. NCC provides no analysis of how *U.S. v. Causby* applies to this situation.⁶⁴ We do not
 17 find that approval of Qwest's contract language amounts to a takings under the United States
 18 Constitution.

19 **Relative Use Factor ("RUF") and VNXX**

20 79. Qwest proposed its standard ICA language for the RUF as follows:⁶⁵

21 7.3.1.1.3.1 The Provider of the LIS two-way Entrance Facility (EF) will
 22 initially share the cost of the LIS two-way EF by assuming an initial
 23 relative use factor (RUF) of fifty percent (50%) for a minimum of one (1)
 24 quarter if the Parties have not exchanged LIS traffic previously. The
 25 nominal charge to the other Party for the use of the EF as described in
 26 Exhibit A shall be reduced by this initial relative use factor. Payments by
 the other Party will be according to this initial relative use factor for a
 minimum of one (1) quarter. The initial relative use factor will continue
 for both bill reduction and payments until the Parties agree to a new factor,
 based upon actual minutes of use data. If CLEC's End User Customers
 are assigned NPA-NXXs associated with a rate center different from the

27 ⁶⁴ In *Causby* the Court found that frequent and regular flights of military aircraft over a chicken farm rendered the
 28 property unusable for that purpose and constituted a taking of private property.

⁶⁵ Ex Q-3 Albersheim Dir. at 22. Joint Matrix at 6.

rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area, regardless of the called and calling NPA-NXXx involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. Qwest has never agreed to exchange VNXX traffic with CLEC.

7.3.2.2.1 The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments for the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center other than the rate center where the End Use Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area, regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for VNXX traffic. If either Party demonstrates with data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. Qwest has never agreed to exchange VNXX traffic with CLEC.

Exhibit H

Calculation of the Relative Use Factor (RUF)

Minutes that are Qwest's responsibility (A):

- All EAS/Local 251(b)(5) Minutes of Use (MOU) that Qwest sends to CLEC
- All Qwest Exchange Access MOU that Qwest sends to CLEC
- EAS/Local 251(b)(5) traffic that transits Qwest network and is terminated to CLEC, for which Qwest receives compensation from the originating Carrier for performing the local transiting function
- All Intra LATA transit MOU that Qwest send to CLEC
- All ISP-bound and FX MOU that CLEC sends to Qwest

Minutes that are CLEC's responsibility (B):

- All EAS/Local 251(b)(5)MOU that CLEC sends to Qwest
- All Exchange Access MOU that CLEC sends to Qwest
- All EAS/Local 251(b)(5) traffic that CLEC sends to Qwest for termination on another Carrier's network
- All Intra LATA transit MOU that CLEC sends to Qwest

- All Jointly Provided Switched Access (unless joint NECA 4 billing percentages have been filed) that Qwest sends to CLEC and that CLEC sends to Qwest
- All ISP-bound and VNXX MOU that Qwest sends to CLEC
- All VNXX MOU that transits Qwest network and is terminated to CLEC

The mathematical equation for RUF is as follows:

Qwest (A)/ (A + B) Rounded to the nearest whole percentage
CLEC (B)/(A+B) Rounded to the nearest whole percentage

Data used for the calculation will be the average of the most recent three (3) months usage determined not to be an anomaly.

80. Qwest's proposed ICA defines VNXX or Virtual NXX as:

All traffic originated by a Party's End User Customer and dialed with a local dialing pattern that is not terminated to the other Party's End User Customer physically located within the same Qwest Local Calling Area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed. VNXX does not include originating 8XX traffic.⁶⁶

81. NCC argues that the Commission should reject Qwest's proposed RUF, and terms for VNXX. NCC argues that the issue of VNXX is still undecided in Arizona and it would be inappropriate for Qwest's definition of VNXX to be adopted pending a final decision of the Commission. NCC proposed that the ICA provide merely that "VNXX will be treated in accordance with Commission rulings."

82. NCC argues that Qwest's VNXX language is without legal justification and self-serving by prohibiting NCC from receiving compensation for VNXX calls. NCC asserts that Qwest had not provided legal or regulatory justification to support its VNXX proposal, but simply wants to avoid compensation obligations.

83. NCC states that there has been no negotiation on the VNXX issue.⁶⁷ NCC argues that until the Commission creates rules that define and govern VNXX traffic, Qwest should not be permitted to impose a unilateral, self-serving definition and exclusions. NCC states that accepting Qwest's VNXX proposal will prohibit NCC (and any carrier opting into the agreement) from offering a full range of competitive telecommunications services.⁶⁸

⁶⁶ Ex Q-3 Albersheim Dir. at 23.

⁶⁷ NCC Brief at 8.

⁶⁸ NCC Brief at 8.

1 84. At the hearing, NCC confirmed that it does not have any VNXX traffic in Arizona and
2 that it does not have any ISP customers.⁶⁹

3 85. With respect to the proposed RUF, NCC states that Qwest is proposing “to count
4 certain calls originating with Qwest and terminating to NCC as if they were originated by NCC and
5 terminated to Qwest.”⁷⁰ NCC states that nearly 100 percent of the calls exchanged between the
6 parties are calls from Qwest’s customers to NCC’s customers, and thus the actual use is 100 percent
7 attributable to Qwest.

8 86. According to Qwest, the Relative Use Factor is applicable to local interconnection
9 trunks when traffic data is available to allow each carrier to account for its proportion of traffic, and
10 adjust billing accordingly.⁷¹ Qwest states that its proposed ICA contains the standard language for
11 the calculation of the RUF, and that NCC did not dispute the RUF language at the time it filed its
12 Response to the Petition, but raised it issue in its rebuttal testimony.

13 87. Under Qwest’s proposed language, the starting point for assigning facility costs for
14 both the entrance facility and any direct trunked transport is a 50/50 sharing of the costs between both
15 parties when the interconnecting companies have not exchanged LIS traffic previously.⁷² The initial
16 assignment is valid for three months, and then the parties may seek recalculation based on the actual
17 relative use. Qwest states that these terms have been agreed to between Qwest and at least 48 other
18 CLECs.⁷³

19 88. Qwest states that in subsequent negotiations, it proposed a more favorable sharing to
20 NCC that would assign 1 percent of the cost to NCC and 99 percent to Qwest, so long as the two
21 parties file billing percentages in NECA 4 that give Qwest 100 percent ownership of the transport
22 facilities.⁷⁴ Qwest states that no agreement was reached during negotiations.

23 89. In addition to the standard ICA language, Qwest added language in Section 7.8 to
24 exclude VNXX traffic from NCC’s bills to Qwest. Qwest asserts that this is consistent with the

25 ⁶⁹ Tr. at 159.

26 ⁷⁰ NCC Brief at 8.

27 ⁷¹ Ex Q-3 Albersheim Dir. at 19.

28 ⁷² Ex Q-3 Albersheim Dir at 19.

⁷³ Ex Q-3 Albersheim Dir at 23.

⁷⁴ Proposed ICA, Section 7.3.1.1.3.1 and Section 7.3.2.2.1. Qwest states that the specific 1%/99% RUF language is not in the ICA filed with Qwest’s petition as that offer was made to NCC after that filing.

1 Commission's Decision in the Level 3 arbitration in which the Commission determined that VNXX
2 should not be permitted, and that the parties could negotiate an "FX-like" alternative to VNXX.⁷⁵
3 Qwest asserts that the Commission's Decisions do not allow the use of VNXX over LIS trunks, but
4 rather requires the establishment of direct end office trunks for the exchange of what is called "FX-
5 Like" traffic.

6 90. In response to NCC's argument that the ICA should not define VNXX, Qwest argues
7 that the lack of specific terms in a contract is a recipe for future disputes and that its proposed
8 language properly implements the requirements regarding VNXX.⁷⁶ Although NCC's disagreement
9 with Qwest about the treatment of VNXX is hypothetical at this point (because NCC has stated it
10 does not utilize VNXX), Qwest wants to include the VNXX language in the ICA because it is
11 consistent with Commission decisions, and other carriers can opt into this agreement. Qwest states
12 that if the ICA is silent as to this issue, the matter will come back to the Commission some day for
13 resolution.

14 Resolution

15 91. FCC Rule 51.709(b) provides:

16 The rate of a carrier providing transmission facilities dedicated to the
17 transmission of traffic between two carriers' networks shall recover only
18 the costs of the proportion of that trunk capacity used by an
interconnecting carrier to send traffic that will terminate on the providing
carrier's network. Such proportion may be measured during peak periods.

19 92. Qwest has proposed its standard RUF and VNXX language which assumes as an
20 initial position that the exchange of traffic will essentially be equal or 50/50. NCC apparently
21 believes that the ICA should not contain a provision concerning RUF for LIS trunks, and offers no
22 alternative proposal for this section.

23 93. Qwest's proposed language concerning the RUF is generally reasonable, and allows a
24 recalculation of the RUF based on actual data. However, because the parties have a history of
25 exchanging LIS traffic, and the testimony in this proceeding is that currently, essentially all of the
26 calls originate with Qwest and terminate with NCC, an initial RUF of 50/50 is not reasonable. These

27
28 ⁷⁵ Decision Nos. 68817 (June 29, 2006) at 57 and 69176 (December 5, 2006) at 5-6.

⁷⁶ Qwest Brief at 6.

Sections should be modified by specifying that the initial RUF is 99/1, indicating that 99 percent of the traffic originates on Qwest's network and is thus Qwest's responsibility under the proposed Exhibit H. Although both parties testified that currently NCC sends no calls directly to Qwest, no party offered evidence of the actual historic relative use of the facilities. Consequently, an RUF of 99 percent Qwest's responsibility and 1 percent NCC responsibility is a reasonable initial RUF factor, provided that they implement an agreement regarding the charging of transport facilities costs to interexchange carriers using billing percentages filed in NECA tariffs reflecting Qwest total ownership of the transport facilities. Absent such an implemented agreement the Parties shall calculate the initial RUF using the terms incorporated in Exhibit H.

94. Either party can utilize the procedures established in Section 7.3.1.3.1 or 7.3.2.2.1 if it believes actual data supports a different RUF.

95. This Commission has not allowed CLECs to utilize VNXX.⁷⁷ NCC has not offered any authority that Qwest's language is contrary to law or policy in this state, nor did NCC offer alternative language for consideration. Qwest's proposed language in Sections 7.3.1.1.3.1 and 7.3.2.2.1 concerning VNXX is reasonable and comports with previous Commission Decisions.⁷⁸

96. Consequently, with the changes to the initial RUF as set forth above, Sections 7.3.1.1.3.1 and 7.3.2.2, and Exhibit H are reasonable and should be approved.

Multiplexing, Non-recurring Trunk Fees and Third Party Interconnection

Trunk Non-Recurring Charges

97. In Section 7.3.3 Qwest proposes the following language:⁷⁹

7.3.3 Trunk Nonrecurring Charges

7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Qwest's rates are specified in Exhibit A.

7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one half (1/2) the rates specified in Exhibit A.

98. NCC opposes Qwest's nonrecurring charges and argues that Qwest should be

⁷⁷ Decision No. 68817 at 28-30.

⁷⁸ See Decision No. 68817.

⁷⁹ Jt. Matrix at 10.

1 responsible for the installation costs of facilities to deliver traffic to NCC.⁸⁰

2 99. Qwest asserts that the issue of non-recurring charges for LIS trunks was raised by
3 NCC in the issues matrix, but was not raised in response to the Petition and was not one of the issues
4 negotiated by the parties.⁸¹ Qwest asserts that NCC did not propose alternative language and did not
5 provide legal or factual support for opposing Qwest's proposed language for trunk non-recurring
6 charges. Qwest states that its standard language has been adopted in dozens of agreements, and
7 references rates in Exhibit A, which contains Commission-approved rates.

8 100. Qwest states that NCC has paid the non-recurring charges under the existing ICA, and
9 no other carrier has been granted an exemption such as NCC is seeking in this case. Qwest notes that
10 it is the CLEC that requests trunks be set up, and incurs the charge only if the CLEC requests
11 additional trunks.

12 **Resolution**

13 101. Qwest makes LIS Entrance Facilities available for interconnection for the exchange of
14 local traffic. Section 251(c)(3) of the Act requires Qwest to make these facilities available at rates,
15 terms and conditions that are just reasonable and nondiscriminatory.

16 102. Qwest incurs costs when CLECs order Entrance Facilities. Qwest is entitled to recover
17 the costs of these facilities pursuant to the Act.

18 103. Qwest makes these facilities available to NCC on a non-discriminatory basis at rates
19 that have been approved by the Commission.⁸²

20 104. Qwest's language concerning non-recurring trunk costs comports with Qwest's
21 Arizona SGAT,⁸³ and is standard ICA language that has been adopted in many other ICAs. We find
22 that Sections 7.3.3.1 and 7.3.3.2 are reasonable and we adopt Qwest's proposed language for these
23 Sections.

24 **Multiplexing (MUX) Charges**

25 105. In Section 7.3.2.3, Qwest proposes the following:

26
27 ⁸⁰ Jt. Matrix at 10.

⁸¹ Qwest Brief at 16.

⁸² Ex Q-5 at Ex A.

28 ⁸³ See Docket No. T-01051B-99-0068. Qwest filed its 14th revised SGAT on August 29, 2003.

7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.

106. Multiplexing facilities allow multiple signals to be carried on a circuit and are used to augment or disassemble a circuit's capacity.

107. NCC argues that the Commission should reject Qwest's proposed MUX fees, as Qwest should not be allowed to bill NCC for 100 percent of the MUXs on Qwest's network while Qwest refuses to credit NCC for the use of the MUXs on NCC's side of the circuit. NCC claims that no other ILEC charges NCC for MUXs.⁸⁴

108. NCC argues that Qwest should be fully responsible for its MUX fees.⁸⁵ NCC claims that based on the plain language of A.A.C. 14-2-1303(B), Qwest is responsible for any MUX or installation or monthly fees for T1's or DS3s that it uses or requires to interconnect with NCC. Thus, according to NCC, the Commission should prohibit Qwest from imposing fees on NCC for any Qwest MUX to the point of interconnection, or, in the alternative, impose a mutual obligation on Qwest to pay MUX fees to NCC. In addition, NCC argues the Commission should prohibit Qwest from billing NCC for installation fees for MUXs or trunks used by Qwest to interconnect with NCC.

109. NCC claims that if Qwest is permitted to impose MUX fees, NCC should be permitted to interconnect through a third party that will not charge MUX fees, installation fees or monthly fees to NCC.⁸⁶ NCC alleges that Qwest's proposed prohibition on third-party interconnection exists so that Qwest can charge MUX and installation fees on interconnecting carriers.⁸⁷

110. Qwest states that NCC did not raise this issue in its response to the arbitration Petition, and did not propose alternative language or legal or factual support for opposing Qwest's proposed language on multiplexing. Qwest states that its ICA language is standard language that has been adopted in dozens of agreements and references multiplexing rates in Exhibit A, which contains Commission-approved rates.⁸⁸

111. Qwest asserts that NCC is responsible for multiplexing charges under the existing

⁸⁴ Ex N-3 Lesser Reply at 10-12.

⁸⁵ A.A.C. 14-2-1303(B) provides "each company interconnecting pursuant to this provision of this Section shall be responsible for building and maintaining **its own facilities to the point of interconnection.**" (emphasis added); NCC Brief at 9.

⁸⁶ NCC Brief at 9.

⁸⁷ *Id.*

⁸⁸ Qwest Brief at 15.

ICA.⁸⁹ Qwest states that no other carrier has been granted an exemption from paying Qwest multiplexing charges as NCC is requesting in this case. Furthermore, Qwest states that multiplexing is only established and the cost incurred if the CLEC requests multiplexing.

112. Qwest believes that NCC saves money by using DS3 interconnection compared to DS1 interconnections (one DS3 is cheaper than 24 DS1 if ordered separately), but that DS3 interconnection requires multiplexing. Qwest argues that NCC is essentially requesting multiplexing from Qwest for free, which is contrary to the requirements of the Act that permits Qwest to recover its costs for facilities provided to CLECs.

Resolution

113. Qwest proposed language for Section 7.3.2.3 is identical to that in Qwest's Arizona SGAT (14th Revision filed August 29, 2003).

114. The Commission approved Qwest's rates for multiplexing in Phase II of the Arizona Cost Docket.⁹⁰

115. Qwest's proposal here is the same as we approved in the Level 3 Arbitration where we found that MUXs should continue to be provided at the cost-based rates approved in Phase II of Qwest's Cost Docket.⁹¹

116. MUXing is something the CLEC requests. If the CLEC find it advantageous to order DS3s and then need multiplexing to bring those lines to DS1s, it should be responsible for the cost of providing those facilities. NCC has not provided any authority to the contrary, nor has NCC offered alternative contract language.

117. There was no evidence presented in this proceeding whether Qwest orders facilities, including MUXs from NCC. In any case, NCC did not propose contract language in support of its position.

118. We find that Qwest's language concerning the charges for MUXing in Section 7.3.2.3 is reasonable and should be approved.

Third Party Transit

⁸⁹ Ex Q-6 at 76 provides for DS3-DS1 multiplexing for interconnection.

⁹⁰ Decision No. 64922 (June 12, 2002).

⁹¹ Decision No. 70356 at 72.

119. In Sections 7.1.1 and 7.2.1.1 (discussed earlier) Qwest proposed language that prohibits interconnection through third party carriers unless the parties negotiate an amendment to the ICA allowing such interconnection.

120. Qwest notes that the existing ICA contains such provision as well: "Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks, without the use of third party transit providers."⁹²

121. NCC asserts that it should be able to interconnect with Qwest via a third party tandem provider.

122. Qwest asserts that the issues raised by a third party tandem provider are not covered in the standard ICA and include: 1) what agreement(s) between Qwest and the third party should also exist; 2) how the CLEC should appropriately notify the industry of such as agreement; 3) how the transit arrangement will affect Qwest's obligation to route other service providers' traffic to the CLEC; 4) compensation arrangements; 5) conditions for the exchange of records between the parties; 6) minimum required signaling information; and 7) what type of traffic may be restricted from being routed through a third party.⁹³ Qwest states that none of these issues have been discussed or negotiated, and it is not appropriate to decide them in this case.

Resolution

123. The FCC is seeking ways to address the problem of phantom traffic.⁹⁴ In its recent *NPRM*, the FCC found:

When the originating and terminating networks are not directly connected, as is the case when calls are delivered via tandem transit service, complications with transmitting and receiving billing information related to a call can arise. In some instances, the operation of these systems can--intentionally or unintentionally--result in traffic arriving for termination with insufficient identification information, which makes it difficult or impossible for the terminating provider to identify and bill the originating provider.⁹⁵

124. Qwest's proposed ICA language does not foreclose the possibility of the parties interconnecting through a third party provider. In this case, however, NCC did not provide contract

⁹² Ex Q-6 at 8, Section (V) A.

⁹³ Qwest Brief at 17-18.

⁹⁴ Phantom traffic does not have sufficient identifying information to allow for accurate identification. See *NPRM* at ¶ 620.

⁹⁵ *NPRM* at ¶ 622.

1 language or sufficient evidence to support a finding such interconnection is appropriate at this time.
 2 Furthermore, use of a third party intermediary does not necessarily solve the problem of the lack of
 3 ANI if the originating carrier employs MF signaling to communicate with the intermediary.
 4 Consequently, we find that Qwest's proposed language in Sections 7.1.1 and 7.2.1.1 is reasonable
 5 and should remain.

6 **CNAM Database Information**

7 125. NCC asserts that the new ICA should include language that requires Qwest to
 8 purchase CNAM (Calling Name) information from NCC on the same terms and conditions that NCC
 9 purchases CNAM data from Qwest.⁹⁶

10 126. NCC claims that Qwest is hindering its ability to provide competitive service offerings
 11 by refusing to purchase NCC's calling name and number data. CNAM data is the information that
 12 allows an NCC customer's name to appear on caller ID when that NCC customer calls a Qwest
 13 customer.⁹⁷

14 127. NCC claims that Qwest's "refusal to purchase CNAM data is one of the main reasons
 15 NCC does not send outbound calls over its interconnection trunks in Arizona and/or convert to
 16 SS7."⁹⁸ NCC argues that Qwest's claim that A.A.C. 14-2-1303(A) only requires ILECs to make their
 17 CNAM data available to CLECs "ignores the fact that caller ID is such a part of telecommunications
 18 service today that NCC's offerings are inferior if they do not include CNAM data."⁹⁹

19 128. NCC asserts that because Qwest's refusal to purchase CNAM data from NCC is
 20 anticompetitive and discriminatory, and because database access is part of the parties'
 21 interconnection obligations, the Commission should address the matter as part of this proceeding.

22 129. Qwest argues that there are multiple reasons not to include such requirement in this
 23 Order including: 1) the issue was not properly raised by NCC in either its response to the Petition or
 24 in the disputed issues list; 2) NCC cannot point to any legal obligation that Qwest has to purchase
 25 CNAM information from a CLEC; and 3) even if Qwest were to want a CNAM agreement with
 26

27 ⁹⁶ NCC Brief at 9.

⁹⁷ NCC Brief at 9.

⁹⁸ NCC Brief at 10 *citing* Ex N-2 Lesser Dir. at 18; Ex N-3 Lesser Reply at 19-20.

⁹⁹ NCC Brief at 10.

1 NCC, Qwest states that CNAM is only available with SS7 signaling.¹⁰⁰

2 130. Qwest asserts that all of the requirements for interconnection, including access to
3 unbundled network elements and databases, are contained in 47 C.F.R. 51, and that no where is there
4 a requirement on the ILEC to purchase database information. Qwest states that the multiple
5 references to databases in the FCC Rule pertain only to the provision of such information by ILECs
6 to CLECs.¹⁰¹

7 **Resolution**

8 131. NCC offers no contract language or legal authority to support its position. FCC rules
9 require carriers to permit nondiscriminatory access to databases but do not appear to require a carrier
10 to purchase CNAM data. NCC has failed to meet its burden to have such requirement added to the
11 agreement.

12 **CONCLUSIONS OF LAW**

13 1. Qwest is a public service corporation within the meaning of Article XV of the Arizona
14 Constitution.

15 2. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

16 3. NCC is a public service corporation within the meaning of Article XV of the Arizona
17 Constitution.

18 4. NCC is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

19 5. The Commission has jurisdiction over Qwest and NCC and of the subject matter of the
20 Petition and arbitration.

21 6. The Commission's resolution of the issues herein is just and reasonable, meets the
22 requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is consistent with
23 the best interests of the parties, and is in the public interest.

24 **ORDER**

25 IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its
26 Order, the resolution of the issues contained in the above Discussion.

27
28 ¹⁰⁰ Ex Q-2 Linse Reb. at 26.

¹⁰¹ Qwest Brief at 18.

1 IT IS FURTHER ORDERED that Qwest Corporation and North County Communications
2 Corporation of Arizona shall prepare and sign an interconnection agreement incorporating the terms
3 of the Commission's resolutions.

4 IT IS FURTHER ORDERED that the signed interconnection agreement shall be submitted to
5 the Commission for its review within thirty days of the date of this Decision.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8
9 
10 CHAIRMAN


COMMISSIONER

11
12 
COMMISSIONER

COMMISSIONER


COMMISSIONER

13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of
17 Phoenix, this 25th day of July, 2011.

18 
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

19
20 
21 DISSENT

22 DISSENT _____
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SERVICE LIST FOR: QWEST CORPORATION and NORTH COUNTY
COMMUNICATIONS CORPORATION OF ARIZONA

DOCKET NOS.: T-03335A-09-0383 and T-01051B-09-0383

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